

## **Juvenile Referral Process**

### **BACKGROUND:**

Under current legal guidelines the Border Patrol has discretion in the application of legal and administrative processes to include the ability to voluntarily return certain juveniles, who are unaccompanied alien children (UACs), to contiguous countries. Historically, there is a limited ability to prosecute juveniles in state, federal, or county courts. The U.S. Border Patrol under the TVPRA has limited processing choices for Mexican UACs suspected of smuggling - Voluntary Return (VR) or Notice to Appear (NTA). This has unintentionally created legal loopholes which are regularly used by transnational criminal organizations (TCOs). These TCOs exploit hundreds of juveniles, using them as smugglers, guides, and scouts; in turn these juveniles are responsible for smuggling thousands of illegal aliens and large amounts of narcotics. The U.S. Government's limited ability to address UACs engaging in illegal activity further encourages the TCOs to use juveniles for their cross-border criminal activity in order to exploit this vulnerability.

The Juvenile Referral Process (JRP, sometimes referred to as the Juvenile Referral Program) was initiated in May 2014 within the South Texas Campaign (encompassing the Border Patrol's Laredo Sector and Del Rio Sector; and Office of Field Operation's Del Rio, Laredo, Roma, Rio Grande City, Hidalgo, Progreso, and Brownsville Ports of Entry) as a way to counter the criminalization and recruitment of juveniles. To clarify, JRP is a process NOT a program.

### **PURPOSE:**

The JRP helps standardize the process for juvenile criminal offenders in order to disrupt the capabilities of the TCO's which exploit juveniles; remove the juvenile offender from the criminal cycle; and deter the continued recruitment of juveniles into illicit activity. The process further enables CBP to protect the welfare of the juvenile by placing the juvenile with the Department of Health and Human Service's Office of Refugee Resettlement. The JRP is applicable to UACs with documented or self-admitted criminal activity and is not meant to be applied to UACs apprehended solely due to their immigration status.

### **APPLICATION:**

Upon apprehension of a previously known/identified or self-identified UAC guide/smugglers, the criminal case is completed in compliance with sector policies – to include information on the current incident, criminal history, and any records of previous smuggling events – and are provided to the sector prosecutions office who work closely with the U.S. Attorney office to determine if the case will be accepted for criminal prosecution. If criminal prosecution is declined, the juvenile smuggler/guide is processed administratively for removal.

Upon completion of all required documentation for criminal/administrative action, the Border Patrol sector Juvenile Coordinator will be advised of a JRP referral so that they may initiate the transfer of the juvenile into the care of Health and Human Services, Office of Refugee Resettlement (HHS/ORR).

This is in keeping with normal UAC processes and procedures, which are consistent with the TVPRA in cases where the juveniles may be exploited by TCOs. The juvenile coordinator will inform HHS of the criminal concerns and recommend that they be considered for placement in HHS/ORR secure facilities, so that HHS/ORR does not inadvertently place other UACs who do not present similar risks at risk of exposure to the criminal element or possible influence of TCOs.

All consular notification requirements are adhered to before the transfer of the UACs into the care of HHS/ORR.

## **RESULTS:**

Initial information indicates positive results from the process but due to the relatively short time that the JRP has been in use, there is not enough data to determine the long term impact.

The following data (current as of November 12, 2014) has been provided by the U.S. Border Patrol:

- Total Referrals: 376
- Current Juveniles referred through the JRP<sup>i</sup>: 272
- Accepted for criminal prosecution<sup>ii</sup>: 0
- UACs repatriated after referral to an Immigration Judge<sup>iii</sup> : 94
- UACs apprehended after referral<sup>iv</sup> : 7
- Average time in the United States, including placement with HHS/ORR: 70 -71 days

## **PATH FORWARD:**

In addition to the ongoing local coordination efforts between the U.S. Border Patrol and Mexican Consulates throughout South Texas, DHS and CBP leadership have provided information concerning the JRP to the Mexican Embassy in Washington, D.C., and requested that Mexico work toward providing alternate options for social assistance and/or reformative action in Mexico. This would help ensure these at-risk children – once repatriated back to Mexico – are allowed to continue any positive progress they have made, which could be used as an alternative to criminal and/or administrative processes in the United States. Also, the implementation of programs in Mexico that promote prevention and deterrence of at-risk juveniles from getting involved in criminal activity would reduce the overall number of children referred to JRP.

CBP will continue to monitor the JRP to determine if the same process (or something similar) should be expanded to other areas of the Southwest Border.

## **Talking Points**

- The Juvenile Referral Process, initiated in May 2014, encompasses both the Border Patrol and the Office of Field Operations within the South Texas Campaign.
- The desired end state is to expose affected juvenile to a positive, constructive environment so that they may be able to better themselves outside of the grip of the transnational criminal organizations, stop engaging in criminal activity and thereby free them from the criminal cycle.
- JRP disrupts the capabilities of TCOs that target and exploit juveniles to support their illegal operations including smuggling illegal aliens and narcotics. JRP does not apply to all juveniles apprehended solely due to their immigration status – it is meant for juveniles with documented or self-admitted criminal activity.
- Upon apprehension of a juvenile that qualifies for the JRP, a criminal case is completed according to existing policies and provided to the local prosecution office, who work with the U.S. Attorney office to determine acceptance for criminal prosecution. If the prosecution is declined, the juvenile is processed administratively for removal.
- The process further enables CBP to protect the welfare of juveniles by placing them with the Department of Health and Human Service's Office of Refugee Resettlement (HHS/ORR), where they receive constant supervision, and provided educational and counseling services pending their appearance before an immigration judge.
- While at HHS/ORR, juveniles under the JRP are segregated from other unaccompanied children who do not present similar risks, to remove their risk of exposure to the criminal element or possible influence of TCOs.
- This is a humanitarian effort that requires close coordination with multiple communities of interest, including: CBP, HHS/ORR, ICE-ERO Juvenile Coordinators and Mexican Consular officials.
- Although the JRP is less than six months old, it has already proven to be effective at reducing recidivism. There have been more than 350 referrals since the initiation of the process, with less than two percent of juveniles apprehended after referral.

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<sup>i</sup> This number represents those UAC's referred through the JRP for who CBP has not received a final disposition of their administrative process.

<sup>ii</sup> All suspected smugglers are referred for criminal prosecution regardless of age. To this date no juveniles referred to DOJ have been accepted for prosecution criminally.

<sup>iii</sup> Repatriated after being considered for criminal prosecution by the JRP and then referred to HHS/ORR pending referral to the Immigration Judge.

<sup>iv</sup> being considered for criminal prosecution by the JRP and ordered removed by an immigration judge (recidivist)